

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 02-0029**  
**Indiana Corporate Income Tax**  
**For Tax Periods 1993, 1994, 1995, and 1996**

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**ISSUE**

**I. Sales of Equipment and Automobile Parts – Gross Income Tax.**

**Authority:** IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); IC 6-2.1-2-2(b); IC 6-2.1-2-3; IC 6-2.1-2-4; IC 6-2.1-2-5; IC 6-2.1-3-3; IC 6-8.1-5-1(b); Dept. of State Revenue v. Brown Boveri, 439 N.E.2d 561 (Ind. 1982); Indiana-Kentucky Elec. v. Dept. of State Revenue, 598 N.E.2d 647 (Ind. Tax Ct. 1992); 45 IAC 1.1-1-3(a); 45 IAC 1.1-3-3(c), (d); 45 IAC 1.1-3-3(d); 45 IAC 1.1-3-3(d)(7).

Taxpayer argues that the money it received from the sale of certain equipment and automobile parts was not subject to Indiana's gross income tax.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company in the business of manufacturing and selling metal parts and fasteners. It is organized into an "industrial group" and a "home construction group." These two groups are further divided into various operating divisions. Taxpayer has manufacturing plants and warehouses within Indiana. It does business with customers inside and outside the state.

The Department of Revenue (Department) conducted an audit review of taxpayer's business operations and tax returns. This audit review resulted in an assessment of additional gross income tax attributable to sales completed during 1993 through 1996. The taxpayer protested the additional assessments, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

**DISCUSSION**

**I. Sales of Equipment and Automobile Parts – Gross Income Tax.**

Taxpayer's business is organized into a number of operating divisions. Taxpayer argues that money received by three of these divisions is not subject to gross income tax.

IC 6-2.1-2-2(a)(1) imposes a gross income tax on "the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana . . . ." For a non-resident, the tax is imposed on, "the

taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana.” IC 6-2.1-2-2(a)(2) “The gross income tax is imposed at two rates, a “high rate” of 1.2 percent and a “low rate” of .3 percent. IC 6-2.1-2-3 “The rate of tax is determined by the type of transaction from which the taxable gross income is received.” IC 6-2.1-2-2(b). The receipts from wholesale sales and from selling at retail are taxed at the low rate. IC 6-2.1-2-4. Receipts from service activities and other business activities are taxed at the high rate. IC 6-2.1-2-5.

However, taxpayer argues that the receipts here at issue were not subject to gross income tax because they were receipts attributable to business conducted between different states. Taxpayer’s argument is based upon IC 6-2.1-3-3 which states that, “Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution.”

However, not all gross income received from transactions in interstate commerce is exempt from gross income tax; only those transactions which the federal constitution proscribes. Indiana-Kentucky Elec. v. Dept. of State Revenue, 598 N.E.2d 647, 652 (Ind. Tax Ct. 1992). The decision as to whether a taxpayer’s particular activities constitute protected interstate commerce “must be made on a case by case basis.” Dept. of State Revenue v. Brown Boveri, 439 N.E.2d 561, 564 (Ind. 1982).

#### **A. Division One.**

Taxpayer’s Division One is headquartered in Michigan; it is in the business of producing metal parts for automobiles. Division One owned and operated – during the years under consideration by the audit – two Indiana manufacturing plants. Taxpayer argues that the sales of the auto parts built in Indiana to customers outside the state are not subject to gross income tax. However, other than the suggestion that these receipts originate from sales of goods which cross the Indiana border, taxpayer has not provided sufficient information to determine whether the sales are exempt from tax or whether the receipts are subject to the tax. There is not enough information to determine whether these particular sales are “not completed in Indiana prior to or after shipment in interstate commerce” or whether the “sale is completed in Indiana prior to or after shipment in interstate commerce” 45 IAC 1.1-3-3(c), (d). Taxpayer has not met its burden of presenting sufficient information upon which to make a determination of whether the Division One Indiana source sales to out-of-state customers are exempt from gross income tax. “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1(b).

#### **B. Division Two.**

Taxpayer’s Division Two manufactures metal and plastic parts for automobiles. Division Two had manufacturing facilities outside the state. It also had an Indiana manufacturing plant and an Indiana warehouse facility. The audit found that “[taxpayer] did not report [Division Two’s] sales to Indiana customers shipped from out of state for which [taxpayer’s] resident salesmen

were responsible for gross income tax.” The audit did not find that all of the Division Two’s sales to Indiana customers were subject to gross income tax. Instead, “Only those sales shipped from out of state attributable to the Indiana resident salesmen are being subject to gross income tax. The Indiana destination sales not attributable to Indiana resident salesmen are not subject to gross income tax.”

The audit correctly differentiated between those sales which gave rise to gross income tax liability and those which did not. By virtue of Division Two’s manufacturing plant and warehouse facility and by virtue of its Indiana sales persons, Division Two established an Indiana “business situs.” See 45 IAC 1.1-1-3(a). Division Two’s sales of goods to Indiana customers – even when the goods originated from one of Division Two’s out-of-state locations – are subject to gross income tax because the sales were “completed in Indiana prior to or after shipment in interstate commerce.” 45 IAC 1.1-3-3(d). The regulation provides an example of a sale that is “completed in Indiana.” “The following are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce . . . [a] sale to an Indiana buyer by a nonresident seller if the sale: (A) originated from; (B) was channeled through; or (C) was otherwise connected with; an Indiana business situs established by the seller.” 45 IAC 1.1-3-3(d)(7). In addition, a sale is “completed in Indiana” when it is “[a] sale to an Indiana buyer by a resident seller even though such goods are shipped from outside Indiana.” These sales were completed upon acceptance of the Indiana customer’s order by one of Division Two’s Indiana salespersons and/or at the time the Indiana customer accepted delivery of the goods at the customer’s Indiana location.

### **C. Division Three.**

Division Three manufactures and distributes fasteners, metal assemblies, and metal stamps. Division Three has an Indiana plant which manufactures construction fasteners. Division Three also has an Illinois manufacturing plant which builds automobile parts. The audit found that “[Division Three] did not report receipts from the sale of goods to customers in Indiana which were shipped from out of state for gross income tax at the low rate.” The audit review concluded that the receipts from these sales were subject to gross income tax.

Taxpayer suggests that money received from the sale of parts to Indiana customers is not subject to gross income tax. Although taxpayer does not state as much, presumably taxpayer’s argument is based upon Division Three’s sales of its Illinois automobile parts to Indiana customers.

As a non-domiciliary, taxpayer’s Division Three gross receipts are taxable only if the receipts were “derived from activities or businesses or any other sources within Indiana.” IC 6-2.1-2-2(a)(2).

Division Three’s sales of its Illinois auto parts are subject to Indiana gross income tax because the sales were “completed in Indiana.” The regulation states that, “Gross income derived from the sale of tangible personal property in interstate commerce *is* subject to the gross income tax if the sale is completed in Indiana.” 45 IAC 1.1-3-3(d) (*Emphasis added*). “The following are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce . . . [a] sale to an Indiana buyer by a nonresident seller if the sale: (A) originated from; (B) was

channeled through; or (C) was otherwise connected with; an Indiana business situs established by the seller.” 45 IAC 1.1-3-3(d)(7). In addition, a sale is “completed in Indiana” when it is “[a] sale to an Indiana buyer by a resident seller even though such goods are shipped from outside Indiana.” The sales at issue took place because Indiana customers contacted taxpayer’s Indiana based salespersons and because the Indiana salespersons worked with the individual customers to obtain suitable goods at an acceptable price.

The Division Three Illinois-to-Indiana sales are interstate transactions. However, taxpayer – by virtue of its Indiana manufacturing and distribution facilities and by virtue of the activities of its Indiana-based salespersons – has established a substantial nexus with this state. *See* 45 IAC 1.1-1-3(a). Under 45 IAC 1.1-3-3(d) these sales were completed in Indiana because the sales originated when the Indiana customers contacted one of taxpayer’s Indiana-based salespersons and because the transaction was completed when the goods were delivered to and received by the Indiana customer. The Division Three sales receipts – derived from the sale of Illinois sourced goods to Indiana customers – are subject to Indiana’s gross income tax.

### **FINDING**

Taxpayer’s protest is respectfully denied.